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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

SHANE LEVERN WALTON,

Defendant and Appellant.

H033842

(Santa Clara County

Sup. Ct. Nos. BB512821, BB513564)

This appeal follows a re-sentencing hearing ordered by this court in defendant's prior appeal, *People v. Walton*, H032332 (hereafter *Walton I.*) We appointed counsel to represent defendant in this court. In this appeal, appointed counsel has filed an opening brief which states the case but raises no specific issues. We notified defendant of his right to submit written argument in his own behalf within 30 days. He has not done so.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we have reviewed the entire record, and we have concluded that there is no arguable issue on appeal. (See also *People v. Kelly* (2006) 40 Cal.4th 106, 124.) Therefore, we will affirm.

**PROCEDURAL BACKGROUND**

In case number BB512851, defendant pleaded guilty to possession of cocaine base (Health & Safety Code, § 11350, subd. (a)) and admitted three prior prison term

allegations. (Pen. Code, § 667.5, subd. (b)) The court suspended imposition of sentence and placed defendant on probation under the provisions of Proposition 36<sup>1</sup> for two years.

In case number BB513564, defendant pleaded no contest to burglary of a car (§§ 459-460, subd. (b)) and admitted the same prior prison term allegations. “On May 11, 2005, the court joined case numbers BB512851 and BB513564. The court found a violation of probation in case number BB512851 and ordered a further report from the probation department. In light of the new charges, the court found defendant unamenable to Proposition 36 probation. [¶] . . . [¶] On August 4, 2005, the court suspended imposition of sentence and placed defendant on probation for three years in case number BB513564 (the car burglary). The conditions of his probation required, among other things, that he pay fines and fees, that he pay \$476.01 in victim restitution for the damage to the glove box, that he not possess a firearm, and that he serve 198 days in jail. [¶] In case number BB512851 (possession of cocaine), the court revoked probation and terminated the Proposition 36 program, reinstated probation, and extended it to three years coterminous with the grant of probation in case number BB513564, under the same terms and conditions as that case.”

“In September 2007, the probation department petitioned to modify the terms of defendant’s probation. The petition alleged the following ‘circumstances of violation’: (1) defendant was arrested for possession of a dirk or dagger on May 22, 2007; (2) defendant was cited for possession of drug paraphernalia on December 13, 2006; (3) defendant failed to report to the probation office on February 1, 2007, February 12, 2007, and May 16, 2007; (4) defendant tested positive for cocaine on March 21, 2006, tested positive for marijuana on October 20, 2006, and December 21, 2005, and submitted a

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<sup>1</sup> Proposition 36, the Substance Abuse and Crime Prevention Act of 2000 (Act) was approved by voters on November 7, 2000. The Act took effect on July 1, 2001, and is codified at sections 1210, 1210.1, 3063.1, and division 10.8 (commencing with § 11999.4) of the Health and Safety Code.

diluted sample on April 14, 2006; (5) defendant failed to make regular payments and owed \$236 in victim restitution; and (6) defendant owed \$2,722.15 in fees and fines in case number BB513564 and \$557.05 in fines and fees in case number BB512851.”

“On November 19, 2007, the court conducted a hearing on the petition to modify probation. David Fisher, the arresting officer from the May 2007 incident, and Andrew Muir, defendant’s probation officer, testified. . . . [¶] The court concluded that all of the circumstances in violation of probation had been proven true, except the allegation regarding the failure to pay victim restitution. The court revoked probation and sentenced defendant to three years in prison in case number BB513564 (car burglary). . . . In case number BB512851 (possession of cocaine base), the court revoked probation and sentenced defendant to a two-year prison term, to be served concurrent with the sentence in case number BB513564.”

On appeal, defendant argued, and this court agreed, that the object in his possession did not qualify as a “dirk or dagger.” Accordingly, this court reversed the judgment and remanded the matter to the trial court “for resentencing in light of its other findings.”

On January 30, 2009, the matter came on for resentencing. The probation officer recommended the same three-year prison sentence based on the remaining probation violations, defendant’s criminal history, and his lack of amenability to probation. The probation officer’s position was that the misdemeanor dirk or dagger violation “was not the driving force behind the recommendation for the state prison commitment.” The prosecutor concurred in the probation officer’s recommendation. Defense counsel pointed out that defendant had already served his three-year sentence and urged the court not to impose more time. The court then imposed a three-year state prison sentence, which it deemed satisfied, given defendant’s credit for time served.

## STATEMENT OF FACTS

The record in this current appeal does not contain any information about the historical facts underlying defendant's two convictions. This court's unpublished opinion in H032332 indicates the following.

BB512851: "In February 2005, a Mountain View police officer stopped a car on suspicion the driver was under the influence. Defendant, who was on parole, was a passenger in the car. During the stop, the officer conducted a parole search of defendant and found 1.6 grams of rock cocaine inside his left front jacket pocket."

BB513564: "On March 13, 2005, defendant used a 'slim jim' to break into a car in a residential carport in Mountain View and damaged the car's glove box."

## DISCUSSION

On November 18, 2008, appointed counsel filed a *Wende* brief in this court. This court sent a letter notifying defendant of his right to submit a written argument in his own behalf within 30 days. As noted earlier, defendant has not done so. Pursuant to *People v. Wende, supra*, 25 Cal.3d 436, we have reviewed the entire record on appeal. In our view, the court did not err in re-imposing a three-year state prison sentence on remand. We therefore conclude that there is no arguable issue on appeal. (*People v. Kelly, supra*, 40 Cal.4th at p. 124.)

**DISPOSITION**

The judgment is affirmed.

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McAdams, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P.J.

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Duffy, J.